

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2553 OF 2003.
IN
SUIT NO. 3416 OF 2001

The Board of Trustees of the Port of Bombay.]
] .. Plaintiffs

Versus

M/s.J.M. Fashions & Ors.] .. Defendants

Mr.U.J. Makhija i/b M/s.Mulla & Mulla and Cragie Blunt
& Caroe for plaintiffs.

Mr.Manoj Khatri for defendant No.3.

CORAM: ANOOP V. MOHTA, J.

DATED: 16TH SEPTEMBER, 2005

P.C. :

1. This Notice of Motion has been taken out by defendant No.3 with basic prayers: to strike off the pleading under Order VI Rule 16 being false, frivolous, vexatious and an abuse of the process of law; to reject the Plaint in view of the provisions of Order VII Rule 11 for want of cause of action; to dismiss the suit as barred by the law of limitation; to declare that the plaintiffs have waived their rights of instituting

proceedings having acknowledged the tripartite agreement between the parties.

2. The present suit filed by the Board of Trustees of the Port of Bombay against four defendants and the same has been pending since 2001. This Notice of Motion has been taken out by all the defendants, but affirmed only by defendant No.3. The basic suit prayers are for demurrage and other charges with interest against all defendants. The nature of the transactions and such other various factual aspects which are interlinked and connect all the defendants, as pleaded in the Plaint have still remained uncontroverted. Till this date, none of the defendants have filed any Written Statement in this matter. The averments in support of the Notice of Motion, therefore, are difficult to be accepted at this stage to grant any relief as prayed for. Various questions of facts need to be looked into, including the liability against all the defendants.

3. Learned counsel appearing for the applicant-defendant No.3 has relied on **Trustees of the Port of Madras through its Chairman Vs. M/s.K.P.V. Sheikh Mohd. Rowther & Co.Pvt. Ltd. & Anr.** AIR 1995, S.C., 1922 in reference to Section 23 of the Ports Act read with Section 12 and 45 of the Customs Act and contended

that in view of the Apex Court's decision, the demurrage charges and/or harbour dues as contemplated under the Ports Act which are payable to the Port Trust are required to be recovered from a consignee and not from a "Steamer Agent". Defendant No.3 claims himself to be Shipping Agent. Therefore, based upon this judgment, he has insisted for grant of prayers as referred above. The liability of all co-defendants cannot be decided on the basis of above submissions at this stage. The Apex Court's judgment based upon the the particular circumstances is distinguishable on facts itself. That was a Writ Petition and not a Suit. A detrimental of a part or full or no liability of the respective defendants in view of the tripartite agreement dated 29th June, 2003, as referred by the defendants is necessary. Even otherwise, apart from the pleadings, at this stage, it is difficult to accept the contention of the defendants, as raised.

4. The parties are at liberty to the appropriate Written Statement or defence. At this interlocutory stage, the material is not sufficient to grant the relief as prayed. The reliefs are claimed against the plaintiffs by defendant No.1's Affidavit, but averments are in respect of all the defendants. Such plea cannot be considered in such fashion.

5. In similarly situated matters, an another Notice of Motion No.980 of 2002 by an order dated 20th February, 2004, was already dismissed.

6. Taking all this into account, the present Notice of Motion is dismissed. No order as to costs.

[srpasha@hc]

[ANOOP V. MOHTA, J.]